



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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AUG 12 2010

RE: MUR 6261
The Frontier Foundation

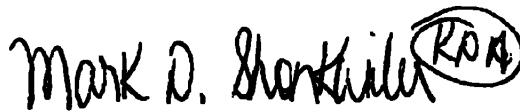
Dear Mr. French and Ms. Gaidoo:

On March 16, 2010, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On August 5, 2010, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe The Frontier Foundation violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6261

RESPONDENT: Frontier Foundation, Inc.

I. INTRODUCTION

MUR 6261 involves allegations that Frontier Foundation ("Foundation"), a section 501(c)(3) organization, made prohibited contributions to subsidize Congressman Stephen Buyer's principal campaign committee, Hoosiers Supporting Buyer for Congress and Douglas E. Raderstorf, in his official capacity as treasurer ("Committee") and/or Buyer's lifestyle.

According to the complaint, this was accomplished by the Committee, and the Foundation commingling their affairs and activities. The complaint further alleges that the Foundation operates solely for Buyer's personal and political benefit, as it had failed to operate for its stated purpose of helping needy students once its endowment reached \$100,000. As support, the complaint alleges that the Foundation made disbursements for office space shared by the Committee based on information that the entities had the same office address and telephone numbers. It also alleges the two entities shared an employee, Stephanie Mattix and that the Foundation subsidized her work for the Committee.

Buyer, the Committee and Mattix filed a joint response. The Foundation filed a separate response. In the responses, Respondents maintain that the entities are operated

1 separately and distinctly from one another, and that no disbursements by the Foundation
2 constituted an in-kind contribution to the Committee.¹

3 Based on the available information, it does not appear that the Foundation made
4 any prohibited in-kind contributions to Buyer or the Committee. Therefore, the
5 Commission found no reason to believe that the Foundation violated 2 U.S.C. § 441b and
6 closed the file.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Factual Background**

9 Buyer has represented Indiana's 4th Congressional District since 2002. In 2003,
10 the Foundation was formed in the state of Indiana to provide scholarships to "needy
11 graduating high school students of Indiana's 4th Congressional district," and to "provide
12 emergency relief to individuals who suffer losses due to casualty, catastrophe, or acts of
13 God."² Foundation Response, Exhibit A. The Foundation has yet to distribute any
14 scholarships, but states it plans to do so once it raises an endowment of \$1 million.
15 Foundation Response at 2. While it appears that Congressman Buyer does not serve as
16 an officer or a board member of the Foundation, he has actively supported it in
17 fundraising efforts. See Foundation Response, Affidavit of Maria Vander Sande
18 (President of Board of Directors).

¹ Respondents note that the Complainant relies upon an ethics complaint filed by Citizens for Responsibility and Ethics (CREW) with the Office of Congressional Ethics (OCE) against Congressman Buyer. According to Respondents, on March 26, 2010, the Board of the OCE dismissed CREW's ethics complaint and closed the matter with no further action. Media reports indicate that OCE did, in fact, dismiss the complaint, but did not provide details as to the reasons for the dismissal.

² On September 29, 2004, the Foundation applied to the IRS for Federal recognition of its tax exempt status as a private foundation and its application was approved in 2005. Foundation Response at 3.

At different times, the Committee and Foundation shared common addresses at 200 North Main Street, Monticello, Indiana, and 103 West Broadway, Monticello, Indiana, but have not done so since October 2009, when the Foundation relocated to a different address. Joint Response at ¶ 4. The Respondents acknowledge that the Committee and Foundation employed Ms. Mattix at various times in various paid and unpaid capacities. Joint Response at ¶ 9 and Foundation Response at 6. The Foundation also compensated Ms. Mattix for her position as secretary/treasurer, and the Committee paid her for the provision of “fundraiser consultant” services. Joint Response at ¶ 9, Foundation Response at 6, Commission disclosure reports and IRS filings.

The complaint alleges that the rental payments made by the Foundation for the Committee’s office space, and the Foundation’s salary payments to Mattix for work performed to benefit Buyer and the Committee constitute a prohibited in-kind contribution made in violation of 2 U.S.C. § 441b.

1. Office rental

As support for the allegation that the Committee and Foundation commingled their activities and affairs in order to support Buyer’s campaign and lifestyle, the complaint states that the Committee, and Foundation reside at the same physical address, and the Committee and Foundation are listed on some IRS forms as having the same telephone number. In its response, the Committee states generally that “[e]ach entity operated with its own lease, office space, bank accounts, credit cards, business ledgers, accounting systems, internal controls, payroll records, computer hardware and software, storage, phone, supplies, legal counsel, and accounting service.” Joint Response at ¶ 7. Respondents specifically deny that any of the entities paid any portion of the rent for the

1 office space that any other entity leased at the same addresses, and provided their
2 separate telephone numbers. Joint Response at ¶ 4 and Foundation Response at 6.

3 According to the Responses, during the tenancy at the 200 North Main Street,
4 Monticello, Indiana location, the Foundation paid \$200 per month, and the Committee
5 paid \$250 per month. Joint Response at ¶ 4 and Commission disclosure reports. Upon
6 their 2009 relocation to 103 West Broadway, Monticello, Indiana, the Foundation paid
7 \$300 per month, and the Committee paid \$850 per month. *Id.* In October 2009, the
8 Foundation relocated to a different location while the Committee remained at the 103
9 West Broadway address. *Id.* The Foundation also noted in its response that it was “not
10 aware of the specific terms of any agreement for the use of office space between either
11 Ms. Vogel [landlord] or Mr. Johnson [landlord], and Congressman Buyer’s campaign
12 . . .” but that it did not pay rent on behalf of Buyer’s campaign. Foundation Response at
13 5 and Affidavit of Maria Vander Sande.

14 The complaint based its allegation of shared telephone numbers on information
15 located in some of the IRS filings by the Foundation. Foundation Response Attachments
16 (Application for Recognition of Exemption and 2003 990-EZ filing). The Committee
17 and the Foundation assert that the listing of the Committee’s telephone number on some
18 IRS forms as the Foundation’s contact number was a clerical error. Joint Response at ¶ 7
19 and Foundation Response at 6. They state that Mattix inadvertently provided the IRS
20 with the Committee’s telephone number rather than the correct contact number for the
21 Foundation. *Id.* Thereafter, the template for the cover page of each IRS 990 form was
22 used repeatedly in error by the accounting firm when filing annual reports for the
23 Foundation. *Id.* The Foundation points out that its tax return for 2004 reflects two

1 telephone numbers for the organization. *See* Foundation Response at 5 and Attachment
2 (Form 990-PF filing for 2004.) The incorrect telephone number of (574) 583-9843 is
3 noted on the front page under B and the correct telephone number of (574) 870-4565 is
4 reflected at Part XV, Line 2a. *Id.*

5 2. Stephanie Mattix's Salary

6 The complaint alleges that the Committee and Foundation each employed
7 Stephanie Mattix, but that her employment by the Foundation was "ghost employment to
8 the extent that any services rendered by Mattix to" the Foundation "were in furtherance
9 of the political campaigns and ambitions of Buyer as Congressman of Indiana's Fourth
10 Congressional District." Complaint at ¶ 12. It further alleges that the stated purposes of
11 the Foundation were a "fraud and sham." Complaint at ¶ 11. In support, the complaint
12 asserts Mattix claimed on the IRS forms to have worked 20 hrs/week (1,000 hrs per year)
13 for the Foundation up until July 31, 2009, during which time she also worked for the
14 Committee. *Id.* at ¶ 9. When compensation for Mattix's employment by the Foundation
15 was discontinued on July 31, 2009, her compensation for employment by the Committee
16 went from \$873 per month to \$1,574 per month. *Id.*

17 Respondents maintain that Mattix was a salaried part-time employee for both the
18 Committee and the Frontier Foundation until July 31, 2009. Joint Response at ¶ 9 and
19 Foundation Response at 6. Upon Mattix's departure from her salaried position with the
20 Foundation, she increased her work duties and responsibilities with the Committee which
21 resulted in an increase in her part-time salary from \$873 per month to \$1,574 per month.
22 Joint Response at ¶ 9. In addition, the Joint Response states that its disclosure reports
23 clearly indicate a flux in Mattix's salary during peak campaign season which was due to

1 her additional duties and responsibilities during those times. *Id.* The Respondents assert
2 that Mattix was legitimately compensated for her work on behalf of the Foundation and
3 the Committee, and any contention that the Foundation was compensating her for work
4 benefiting the Committee is unsubstantiated. Joint Response at ¶ 9.

5 In its separate response, the Foundation states that during Mattix's employment
6 between 2003 and July 31, 2009, she was not authorized by the Board of Directors to
7 work for any other entity during the hours she was to be working for the Foundation.
8 Foundation Response, Affidavit of Maria Vander Sande. Further, the Joint Response
9 provides that the position held by Mattix for seven years paid \$1,000 per month, which is
10 the same amount paid to the successor employee. Joint Response at ¶ 12.

11 3. Foundation's Operation

12 The complaint asserts that the Foundation "failed to operate for its stated purpose
13 of helping needy students and does little more than pay for Congressman Buyer to play
14 golf with donors with interests before his Committee." Complaint at ¶ 6. In addition, it
15 alleges that the stated purposes for the Foundation were a "fraud and sham" and that the
16 true purpose of the organizations is to promote the political campaigns of Buyer and to
17 support his lifestyle. Complaint at ¶ 11. Complainant asserts that Buyer created the
18 Foundation for the "stated purpose of handing out scholarships to needy graduating high
19 school students of Indiana's Fourth Congressional District once the fund reached
20 \$100,000" and that the Foundation has raised more than \$880,000 -- primarily from
21 companies and trade organizations with an interest in the House Energy and Commerce
22 Committee, on which Buyer serves, yet the Foundation has not yet distributed any
23 scholarships. Complaint at ¶ 5. In response, the Foundation maintains that it has

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1 operated within the IRS guidelines for a section 501(c)(3) organization. Foundation
2 Response at 7. The Foundation asserts that the complaint incorrectly states that it was
3 formed to distribute scholarships once it reached a fundraising goal of \$100,000.
4 Foundation Response at 2. According to the Foundation, in its IRS application for
5 Federal recognition of its tax exempt status, it stated the following regarding the activities
6 of the organization:

7 Frontier Foundation, Inc. was formed on June 13, 2003 to
8 address the fact [that] young, educated individuals leaving the
9 state of Indiana upon graduation from college. The organization
10 will provide scholarships for students pledging to work in Indiana
11 for a period of time after graduation. The organization will not
12 award scholarships until \$1,000,000 has been raised through
13 donations. (Emphasis added)
14

15 Foundation Response at 3.

16 The Foundation states that it has raised approximately \$880,000 and that it
17 intends to distribute scholarships once it has raised \$1,000,000. Foundation Response
18 at 3. The Joint Response adds that, upon reaching its "originating goal of \$100,000, the
19 Foundation Board realized this was an insufficient sum to be self-sustaining; therefore,
20 the endowment goal was raised to \$1,000,000." Joint Response at ¶ 6. Further, it states
21 that "[b]uilding an endowment is an acceptable and appropriate business practice among
22 non-profit corporations, colleges, and universities for sustainability purposes." *Id.* In
23 addition, the Respondents assert that Buyer has reimbursed the Foundation for all travel-
24 related expenses, including lodging and golf fees associated with its fundraising events.
25 Joint Response at ¶ 6 and Foundation Response at 4.

B. Analysis

The primary issue presented by this matter is whether the Foundation made prohibited in-kind contributions in the form of disbursements for shared office space and a shared employee (Mattix) that were intended to benefit the Committee.

It is unlawful for any corporation, including section 501(c)(3) corporations, to make contributions or coordinated expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Likewise, candidates and their authorized committees cannot knowingly accept excessive or prohibited contributions. 2 U.S.C. § 441a(f). Treasurers of political committees must disclose the total amount of all receipts including contributions and the total amount of all disbursements including expenditures. 2 U.S.C. § 434(b)(2), (3) and (4).

1. Office rental

All the available information, including the Committee's FEC and the Foundation's IRS filings, confirms that the entities made separate payments for rental space. There is no available information indicating that the Foundation paid any portion of the Committee's office space. That the entities had rental spaces in the same building is not sufficient information to demonstrate that the Foundation is paying for any portion of the rental space occupied by the Committee. Respondents have provided an adequate explanation for the Committee's telephone number appearing on the cover page of the Foundation's IRS filings and provided the separate telephone numbers used by the three entities.

1 2. Mattix's Salary

2 The available information indicates that Mattix was employed at various times in
3 various capacities by the Foundation, the Committee. *See* Commission disclosure reports
4 and IRS filings. The entities' disclosure reports show regular monthly payments to
5 Mattix from all three entities at certain times. *Id.* The Committee's explanation for the
6 increase in Mattix's compensation for consultant services provided to the Committee as
7 being due to her increased work responsibilities and duties in connection with Buyer's re-
8 election campaign appears reasonable. In addition, the Foundation's filings confirm that
9 the individual who replaced Mattix is currently being compensated at \$1,000 per month,
10 the same as Mattix's compensation. *See* IRS filings. Thus, Complainant has provided no
11 persuasive information demonstrating that the Foundation compensated Mattix for work
12 performed to benefit the Committee. That Mattix was employed and compensated by the
13 two entities for various duties and responsibilities does not, in and of itself, support the
14 allegation.

15 3. Foundation's Operations

16 The complaint alleges that the Foundation has not operated for its stated purpose
17 within the IRS guidelines for a section 501(c)(3) organization. The Respondents deny
18 this allegation and counter that the Foundation has engaged in legitimate fundraising
19 efforts and fully intends to distribute scholarships once it reaches the stated fundraising
20 goal of \$1,000,000.

21 While the responses appear to present a plausible rebuttal to the complaint
22 allegation, we need not reach this issue since the Commission lacks jurisdiction to

1 consider this allegation. Therefore, the Commission made no finding regarding the
2 merits of this allegation.

3 **III. CONCLUSION**

4 Based on an assortment of asserted facts, Complainant has drawn unsubstantiated
5 legal conclusions that have been sufficiently rebutted by the responses and public record.
6 The Commission has stated that “[u]nwarranted legal conclusions from asserted facts ...
7 or mere speculation ... will not be accepted as true,” and that “a complaint may be
8 dismissed if it consists of factual allegations that are refuted by sufficiently compelling
9 evidence produced in responses to the complaint.” Statement of Reasons, MUR 5141
10 (Moran for Congress), issued March 11, 2002.

11 Based on the foregoing, the Commission found no reason to believe that the
12 Frontier Foundation made prohibited in-kind contributions in violation of 2 U.S.C.
13 § 441b. Accordingly, the Commission closed the file.

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